



US Army Corps  
of Engineers  
Sacramento District  
1325 J Street  
Sacramento, CA 95814-2922

# Public Notice

Number: 199450235

Date: March 31, 2006

Comments Due: April 21, 2006

**SUBJECT:** The U.S. Army Corps of Engineers, Sacramento District, (Corps) and the Utah Division of Water Quality are evaluating the re-issuance of General Permit 47 which authorizes the discharge of fill material into waters of the U.S. in support of the Logan special Area Management Plan (Logan SAMP). In 1995, and upon completion of the Logan SAMP, the Utah Regulatory Office issues General Permit 47. Such general permits typically expire after 5 years to provide opportunity for review and verification that the programmatic verifications have not resulted in more than minimal individual and cumulative impacts.

The purpose of this Public Notice is to inform interested parties of the Corps' intent to re-issue GP 47 with changes and to solicit comments. To provide context for review, a copy of the original **Logan SAMP Document** (dated March 1994) and the associated **General Permit 47** is attached. Within the Notice itself, the Utah Regulatory Office will provide interested parties with the proposed changes to GP 47, as well as supporting information regarding projects authorized under GP 47 since 1995, compliance of each project with the Special Conditions of GP 47, and mitigation success.

This notice may be viewed at the Corps Regulatory web site at  
<http://www.spk.usace.army.mil/regulatory.html>.

**AUTHORITY:** The proposed GP 47 reverification is being evaluated under Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States and under Section 401 for water quality certification.

**APPLICANT:** Logan City  
Issa Hamud  
450 North 1000 West  
Logan, Utah 84321

**LOCATION:** The SAMP boundaries exist within an 862-acre, one-half mile-wide corridor centered on 1000 West between 300 South and 1800 North, Logan City (see attached dmap). The site encompasses areas of Sections 20, 29, and 32 of Township 12 North, Range 1 East, Cache County, Utah. It also encompasses a portion of Section 5, Township 11 North, Range 1 East. These areas may be referenced from the Smithfield and Logan USGS Topographic Quadrangles.

The City Mitigation site, referenced in the SAMP document and General Permit 47, is located on approximately 153 acres located within Section 5 of Township 11 North, Range 1 East and Section 32 of Township 12 North, Range 1 East (see attached map) in Cache County, Utah.

## BACKGROUND:

The Corps defines the Special Area Management Plan process as a "comprehensive plan providing for natural resource protection and reasonable economic growth containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas".

There are two main goals of the SAMP process according to the Corps: to establish an aquatic resource reserve program, and to minimize individual and cumulative impacts of future projects.

Typically, the authors of a SAMP determine where, within SAMP boundaries, wetland impacts should be programmatically verified under a General Permit, and where wetlands should be protected. This determination is normally based on functional value. If it concurs in the determination, the Corps may authorize the use of a General Permit and apply special conditions to ensure that the resulting impacts will not result in more than minimal individual or cumulative impacts to the aquatic environment.

The City of Logan developed a SAMP for the 10th West Industrial Corridor and the Utah Regulatory Office issued General Permit 47 in support of that SAMP. Both have been in effect since 1995. The attached SAMP document provides the following information for reference:

- Objectives of the Special Area Management Plan;
- Delineation of Jurisdictional wetlands;
- Wetland Functional Assessment;
- Wetlands determined unsuitable for discharge of fill;
- Wetlands not designated as unsuitable for discharge of fill;
- Total potential wetland impacts within 1000 West corridor;
- Consequences of wetland designation;
- Wetland Mitigation Plan;
- Monitoring for wetland establishment success;
- Maintenance and use of the mitigation wetlands; and,
- Mitigation debits and credits.

The attached expired General Permit 47 provides the criteria under which a project must fit in order to qualify for GP 47.

Authorized Discharges: Since 1995, City of Logan and the Utah Regulatory Office (URO) have utilized GP 47 to authorize wetland impacts for five projects. The attached **Table 1** outlines these five projects, the acreage of wetland impacts authorized under GP 4, the type of wetlands impacted, mitigation requirements, and the status of that mitigation. The attached **Table 2** outlines the special conditions of GP 47 for which each project is in compliance. In summary, the City of Logan and the URO authorized a total of 6.41 acres of impact to wet meadow, marsh, and scrub shrub wetlands. The attached **Maps 1a and 1b** illustrate the location of these impacts on the original Management Status Map found within the SAMP document. It is important to note that wetlands exist within SAMP boundaries that were not mapped under the original 1994 assessment of waters of the U.S. for the SAMP. Project proponents discovered additional waters of the U.S. upon a more detailed review of individual properties.

Under Special Conditions 1 c & d of General Permit 47, the Corps outlines mitigation requirements and priorities for proposed wetland impacts within the SAMP boundaries. Those mitigation requirements/priorities include:

- Total avoidance of project impacts to wetlands designated as unsuitable for fill, and buffer areas;
- Adjustment of project plans to avoid all other wetlands on the property to the extent practicable;
- Compensatory mitigation with the following priorities:
  - Priority 1: Restoration and enhancement of on-site wetlands designated as unsuitable for fill;
  - Priority 2: Restoration and enhancement of other on-site wetlands within the property to be developed;
  - Priority 3: Restoration and enhancement of off-site wetlands at the applicant's discretion; and,
  - Priority 4: Creation of off-site wetlands at the city-sponsored wetland mitigation site.

The City of Logan and the Utah Regulatory Office authorized wetland mitigation at the city sponsored mitigation site for three GP47 projects, one of which included partial on-site mitigation. In summary, for the five projects and 6.41 acres of wetland impact authorized under GP 47, the regulatory agencies required 1.17 acres of on-site wetland creation, 1.63 acres of on-site wetland enhancement, 0.44 acres of wetland creation, 1.54 acres of upland buffer, and 4.47 acres of wetland mitigation at the city-sponsored mitigation site. It is important to note the SAMP document does not recommend mitigation ratios, but instead recommends evaluation on a case-by-case basis. Neither the SAMP document, nor General Permit 47, require in-kind mitigation when proposed at the city-sponsored mitigation site.

Unauthorized Discharges: An unauthorized discharge is one that occurs in a water of the U.S. without prior authorization from the Corps under Section 404 of the Clean Water Act. Options for resolution include removal of fill and restoration of the wetlands or an After-the-Fact permit. However, due to limited resources, unauthorized discharges are seldom brought into compliance with Section 404 of the Clean Water Act.

The Utah Regulatory Office is aware of four projects within the SAMP boundaries where an unauthorized discharge has occurred. The attached **Table 3** outlines the location of the violation, wetland acreage filled, and current status. In summary, there exist four properties on which an unauthorized discharge occurred within a total of approximately 0.09 acres of wet meadow, 0.1 acres of spring-fed marsh, and 0.1 acres of buffer to that marsh. Of the four violations, one exists within 0.10 acres of a wetland designated unsuitable for fill under the SAMP. Three of the unauthorized discharges remain unresolved. The Corps authorized one After-the-Fact permit for one unauthorized discharge, however it is unclear whether the required mitigation was implemented.

**PROJECT DESCRIPTION:** The City of Logan has requested re-issuance of General Permit 47. The Utah Regulatory Office believes that the GP can be reverified with changes to address implementation problems and unauthorized discharges within SAMP boundaries.

The five General Permits authorized within the SAMP since 1995 have not consistently complied with the Special Conditions of the permit (see attached **Table 2**). As a result, the Utah Regulatory Office believes that the authorizations have caused more than minimal individual and cumulative impacts. In order to ensure future compliance, the Utah Regulatory Office proposes the following addition to the definitions section of the permit, and the Special Conditions (changes/additions are in **bold type**):

Definitions:

**e. Wetland Review Board (WRB) - this board will consist of representation from the US Army Corps of Engineers (Corps), the City of Logan, the US Fish and Wildlife Service (USFWS), the State of Utah Division of Wildlife Resources (DWR), and the US Environmental Protection Agency (EPA). The Corps will act as lead agency in the collection of comments from the team and will have final decision-making authority. The responsibilities of the board will include:**

- i. Review of all GP 47 applications to ensure each project qualifies for GP 47;**
- ii. Review of all GP 47 applications to ensure compliance with Special Conditions;**

Special Conditions:

1. The developer shall submit to the **Wetland Review Board (WRB)** a notification and map of the wetland areas to be filled, a description of the amount and type of fill material to be used and a description of the mitigation activities to be implemented to compensate for unavoidable impacts to wetlands on the project site. This information will be submitted to the **WRB** for a 30-day review, and to the Corps for final approval. The description shall include:

a. Responsible official's name, address, and telephone number, location of the proposed activity, and volume and type of material to be placed **within waters of the U.S.;**

b. Identification of the wetlands suitable/unsuitable for the discharge of fill material and proposed buffer areas within the property proposed for development;

c. Total avoidance of project impacts to waters of the U.S. designated as unsuitable for fill and buffer areas;

**d. Demonstration of maximum avoidance and minimization of impacts to waters of the U.S. designated as suitable for fill;**

e. Development of plans to provide mitigation for unavoidable impacts to **waters of the U.S. Plans must be submitted in the format indicated in the Sacramento District's Mitigation and Monitoring Plan Guidelines dated December, 2004.** Of first priority will be the **rehabilitation** of on-site waters of the U.S. designated as unsuitable for the discharge of fill material. Second priority will be assigned to **rehabilitation** of other on-site **waters of the U.S.** within the property to be developed. Third priority will be the **re-establishment of former wetlands within the property to be developed.** Fourth priority will be assigned to the re-establishment, or rehabilitation of off-site wetlands and the final priority will be assigned to the

creation of off-site wetlands as mitigation. Off-site wetland creation, re-establishment, or rehabilitation may **occur at the City of Logan mitigation site adjacent to the landfill.**

2. The City of Logan will not issue building permits for areas designated as unsuitable for the discharge of fill material and within buffer areas. Prior to the issuance of further General Permits, an overlay of the areas unsuitable for the discharge of fill material and the buffer areas **must be developed** to aid in communication with developers and planners.
3. All mitigation associated with the Special Area Management Plan will be completed prior to, or concurrent with, the development within the corridor. **Where applicant's request mitigation construction post-development (after authorized impacts to waters of the U.S.), mitigation ratios will be increased.**
4. **This condition has been deleted as Mr. Reynolds is no longer with the DWR and the DWR is a member of the Wetland Review Board.**
5. All mitigation **sites** will be monitored at least annually for five years following completion, **or until success criteria are met for three consecutive years. Monitoring reports must comply with requirements outlined in the Sacramento District Mitigation and Monitoring Guidelines dated December, 2004.**
6. **No activity may be authorized under this permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species.**
7. **No activity, which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C.** In the event the permittee encounters an archaeological or historic site during construction of an activity authorized by this permit, the permittee shall report the find to the Utah State Historical Society, Division of State History, at (801-533-3500), and the Corps Utah Regulatory Office.
8. The permittee shall exercise every reasonable precaution to protect waters of the U.S. from pollution by contaminants or by turbidity and silting during and after construction.
9. **The City of Logan must** submit mitigation debits and credit reports for the **City Mitigation Site** to the Corps of Engineers, Utah Regulatory Office, by **December 30** every year. The report shall contain areas of wetlands which have been created by the City, the project for which wetlands were mitigated, or the debits for wetlands which have been filled illegally in the past. Mitigation for fills placed in wetlands before this general permit **was reverified** must be completed **prior to the verification of additional General Permits (47).**
10. **This special condition has been deleted because the purpose is unclear.**
11. **The WRB will review and recommend mitigation credits for projects on a case-by-case basis. The Corps will provide final decision-making authority.**

**12. Where permittees avoid and/or minimize impacts to on-site waters of the U.S., he/she will deed-restrict these areas. Where other forms of mitigation occur, the permittee will deed restrict these areas. Both areas shall be deed restricted according to the attached template. Where possible, all deed restricted sites will be recorded with a permanent conservation easement held by an independent third party whose main goal is conservation.**

**13. Prior to the verification of additional General Permits (47), the City of Logan shall review the status of waters of the U.S. within SAMP boundaries to ensure that the extent and type of waters of the U.S. has not changed since the original delineation in 1994. The City must provide a map that indicates the location and extent of existing waters of the U.S. relative to uplands and fills within pre-existing waters of the U.S. If changes have occurred, the WRB will make a determination of whether fill suitability designations should be altered.**

**14. As outlined in the Logan SAMP document, the City of Logan shall submit yearly monitoring reports to the Corps for the City Mitigation site until the mitigation reaches and maintains success for three consecutive years. Prior to the verification of additional General Permits (47), the City shall submit to the Corps for approval, a monitoring plan outline that includes the use of wetland delineation criteria for success determinations.**

Standard Conditions:

1) That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and condition of this permit which may result in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended, or revoked in whole or in part.

2) That all activities authorized herein shall be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to Section 301, 302, 306, and 307 of the Federal Water Pollution Act of 1972 (PL 92-500; 86 Stat 816), or pursuant to applicable state and local law.

3) That all activities authorized herein shall, if applicable water quality standards are revised or modified during the term of this permit, be modified if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

4) That the permittee agrees to make every reasonable effort to prosecute the work authorized herein in a manner so as to minimize any adverse impact of the work on fish, wildlife, and natural environmental values.

5) That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

6) That the permittee shall maintain the work authorized herein in good condition and in accordance with submitted plans and drawings.

7) That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or infringement of Federal, State, or local laws or regulations, nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

8) That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensations for damage or injury to the work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

9) That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of an activity would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (a) the extent of a suspension, (b) the reasons for this action, and (c) any corrective or preventive measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of the notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his activity should be permitted, modified, or terminated. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the activity will either be permitted, modified, or terminated.

10) That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

11) That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

12) That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

13) That, if and when the permittee desires to abandon the activity authorized herein, he must restore the area to a condition satisfactory to the District Engineer.

**ADDITIONAL INFORMATION:**

**Environmental Setting.** The environmental setting, including wetland types, is described in the SAMP document.

**Alternatives.** Alternatives reviewed under this process include the No Action alternative which would result in discontinuation of General Permit 47. Other alternatives include reverification of GP 47 in its current form, or revision of the SAMP document and GP 47 to reflect the changes listed in this Public Notice.

**OTHER GOVERNMENTAL AUTHORIZATIONS:** Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the Utah Division of Water Quality, is required for this project. The Utah Division of Water Quality intends to issue certification, provided that the proposed work will not violate applicable water quality standards. Projects are usually certified where the project may create diffuse sources (nonpoint sources) of wastes which will occur only during the actual construction activity and where best management practices will be employed to minimize pollution effects. Written comments on water quality certification should be submitted to Mr. William O. Moellmer, Utah Division of Water Quality, 288 North 1460 West, Post Office Box 144870, Salt Lake City, Utah 84114-4870, on or before **May 1, 2006**.

**HISTORIC PROPERTIES:** The Utah Regulatory Office has reviewed the latest published version of the National Register of Historic Places and its monthly supplements. There are no places either listed or recommended as eligible which would be affected. Presently unknown cultural resources may be located in the permit area.

**ENDANGERED SPECIES:** The project will not affect any Federally-listed threatened or endangered species or their critical habitat that are protected by the Endangered Species Act.

**EVALUATION FACTORS:** The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality,



general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**SUBMITTING COMMENTS:** Written comments, referencing Public Notice 199450235, must be submitted to the office listed below on or before **April 21, 2006**:

Amy Defreese, Senior Project Manager  
US Army Corps of Engineers, Sacramento District  
Utah Regulatory Office  
533 West 2600 South, Suite 150  
Bountiful, Utah 84010-7744  
Email: [Amy.Defreese@usace.army.mil](mailto:Amy.Defreese@usace.army.mil)

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant or the Corps' project manager Amy Defreese, 801-295-8380, extension 13, [Amy.Defreese@usace.army.mil](mailto:Amy.Defreese@usace.army.mil).

Attachments:

Logan SAMP Document  
General Permit 47 (Effective 3 February 2000, Expiration Date: 3 February 2005)  
Table 1: Projects authorized under GP 47  
Map 1: Location of projects within SAMP boundaries  
Table 2: Special Condition Compliance  
Table 3: Unauthorized Discharges within SAMP boundaries  
Template Deed Restrictions